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RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA. S.J.

E-FILING
UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION**JF****HRL****Dale Lindseth**) Case No. **C08 02405****Plaintiff,**
) **COMPLAINT FOR VIOLATION**
) **OF FEDERAL FAIR DEBT**
) **COLLECTION PRACTICES ACT**
) **AND VIOLATION OF**
) **ROSENTHAL FAIR DEBT**
) **COLLECTION PRACTICES ACT**
Credit Management Services, Inc.**Defendant.**

)

I. INTRODUCTION

1. This is an action for damages brought by an individual consumer for Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (hereinafter "FDCPA"), and the Rosenthal Fair Debt Collection Practices Act, Cal Civ Code § 1788, *et seq.* (hereinafter "RFDCPA"), both of which prohibit debt collectors from engaging in abusive, deceptive, and unfair practices.

C.7G1NAD**II. JURISDICTION**

2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d).

III. PARTIES

3. Plaintiff, Dale Lindseth, is a natural person residing in San Benito county, in the state of California, and is a "consumer" as defined by the FDCPA, 15 U.S.C. § 1692a(3).

4. At all relevant times herein, Defendant, Credit Management Services, Inc. ("Defendant") was an active Nebraska corporation, engaged, by use of the mails and telephone, in the business of collecting a debt from Plaintiff which qualifies as a "debt," as defined by 15 U.S.C. §1692a(5), and a "consumer debt," as defined by Cal Civ Code § 1788.2(f). Defendant regularly attempts to collect debts alleged to be due another, and therefore is a "debt collector" as defined by the FDCPA, 15 U.S.C. § 1692a(6), and RFDCPA, Cal Civ Code § 1788.2(c).

IV. FACTUAL ALLEGATIONS

5. At various and multiple times prior to the filing of the instant complaint, including within the one year preceding the filing of this complaint, Defendant contacted Plaintiff in an attempt to collect an alleged outstanding debt.

6. On at least one occasion in the past year and in connection with the collection of the alleged debt, Defendant threatened to take legal action against

1 Plaintiff that it had no legal right to take, including but not limited to threatening
2 to garnish Plaintiff's wages and freeze Plaintiff's bank account, in violation of 15
3 USC 1692e(5) and RFDCPA, Cal Civ Code § 1788.10(e).

4
5 7. On at least one occasion in the past year and in connection with the
6 collection of the alleged debt, Defendant used false representations and deceptive
7 means in connection with the collection of the alleged debt, including giving
8 Plaintiff inconsistent messages with respect to his statutory right to dispute the
9 debt in violation of 15 USC § 1692e(10) and RFDCPA, Cal Civ Code § 1788, *et*
10 *seq.*

11
12 8. On at least one occasion in the past year, Defendant made threats
13 that overshadowed and contradicted the disclosures required by 15 USC § 1692g,
14 including the threat to begin garnishing wages within the statutory 30 day period
15 in violation of 15 USC § 1692g and RFDCPA, Cal Civ Code § 1788(10)e.

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17 9. As a result of Defendant's behavior, detailed above, Plaintiff
18 suffered and continues to suffer injury to Plaintiff's feelings, personal
19 humiliation, embarrassment, mental anguish and emotional distress.

20
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COUNT I: VIOLATION OF FAIR DEBT
COLLECTION PRACTICES ACT

22
23 10. Plaintiff reincorporates by reference all of the preceding paragraphs.

1
2 **PRAYER FOR RELIEF**
3

4 WHEREFORE, Plaintiff respectfully prays that judgment be entered
5 against the Defendant for the following:

6

7 A. Declaratory judgment that Defendant's conduct
8 violated the FDCPA;
9 B. Actual damages;
10 C. Statutory damages;
11 D. Costs and reasonable attorney's fees; and,
12 E. For such other and further relief as may be just and proper.

13 **COUNT II: VIOLATION OF ROSENTHAL**
14 **FAIR DEBT COLLECTION PRACTICES ACT**

15 11. Plaintiff reincorporates by reference all of the preceding paragraphs.
16 12. To the extent that Defendant's actions, counted above, violated the
17 RFDCPA, those actions were done knowingly and willfully.

18 **PRAYER FOR RELIEF**
19

20 WHEREFORE, Plaintiff respectfully prays that judgment be entered
21 against the Defendant for the following:

22

23 A. Declaratory judgment that Defendant's conduct
24 violated the RFDCPA;
25 B. Actual damages;
26 C. Statutory damages for willful and negligent violations;
27 D. Costs and reasonable attorney's fees,
28 F. For such other and further relief as may be just and proper.

1
2 **PLAINTIFF HEREBY REQUESTS A TRIAL BY JURY**
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5 Respectfully submitted this 6th day of May, 2008
6
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8 By: _____
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